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ABSTRACT

After introductory sections on the incidence of crime among juveniles and in the schools, the author concentrates on the rights of students in the schools and in the courts. He traces the historical development of juvenile courts from their original intentions up to the Supreme Court decisions that have granted substantial civil liberties to juveniles. It is noted that not every case of delinquency (based on criminal law violations) need be referred to juvenile court. It is possible that an administrative unit of a school could make appropriate disposition of school-related delinquent acts, provided that the requirements of due process and fundamental fairness are met. If a student is referred outside the school system, it is reasonable to expect that he would be first referred to the juvenile court. If a juvenile is referred to the court, the school must be willing to accept the jurisdiction of the court as controlling. (Author/IRT)

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SCHOOL SECURITY AND RIGHTS OF JUVENILES

A Paper Presented By

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SCHOOL SECURITY AND RIGHTS OF JUVENILES

Introduction

As a citizen of a metropolitan community (Seattle), I am generally aware of problems relating to school security.

This awareness is, of course, somewhat sharpened by the circumstance that, in my experience as a prosecutor and as a judge, I have encountered the school security problem relating directly to serious law violations such as arson, burglary, assault, robbery, extortion and possession and sale of dangerous drugs.

Because school age is generally consistent with juvenile court age for jurisdiction, my experience as a Juvenile Court Judge in the Superior Court of Washington for King County has provided me even greater awareness of problems relating to school security.

I have made no study of other jurisdictions, but I think at least that our Washington state experience is fairly consistent with the experience in other states. I will at least make that assumption, with the expectation that my observations will be interpolated to fit the concerns of individuals in other areas.

Police Experience with Juveniles

The latest published statistical report of the Seattle Police Department is for the calendar year 1973.[1] In that year, offenses involving accused persons under the age of 18 years (the age of juvenile court jurisdiction in Washington state) which would be of reasonable concern to school security persons are as follows:

Forcible Rape	14
Robbery	213
Aggravated Assault	34
Burglary--Breaking or Entering	857
Larceny--Theft	2,441
Taking or Riding in a Motor Vehicle Without Permission of Owner	468
Other Assaults	465
Arson	7
Vandalism	335
Possession of Weapons	78
Drug Law Violations	
Opium or Cocaine and their derivatives (morphine, heroin, codeine)	8
Marijuana	310
Synthetic narcotics	1
Dangerous non-narcotic drugs (amphetamines, benzedrine)	52
Curfew and Loitering	587
Runaways	2,198

Although in one instance the statistical incidence involved only one racial group, in the main, offenses reported by the Seattle Police Department involved a fair representation of the dominant black and white groups; and at least a cognizable involvement of Native American, Asian and "All others," which presumably included Chicanos.[2]

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1 Seattle Police Department Statistical Report, 1973, pp. 54-55.

2 Ibid.

With the exception of rape, with the youngest alleged offender in the 11-12 age range, each of the offenses listed here included alleged offenders 10 and under; with a fair distribution up the ladder to age 18.[3]

Some of the offenses listed by the Seattle Police Department doubtless related directly to school security, although there is no identification of these cases in the police report, as such.

There is no specific indication of dispositions in these cases, although of a total of 10,484 juvenile cases handled by the Seattle Police Department for the reporting period (including the 8,067 particularly listed here), 846 were investigated and released; 4 were deceased; 3,760 were adjusted with parent or guardian; 40 were referred to school authorities; 249 were referred to social agencies; 64 were referred back to an institution or other law enforcement agency; and 5,460 were referred to the Juvenile Court.[4]

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[3] Ibid. It is noted that for persons over age 18, the total number of cases in the same group was 22,053, hardly more than twice the number for persons under age 18 in the same group (total 10,484).

[4] Ibid.

A School Security Office's Experience with Juveniles

Reference to the Annual Report of the Security Office, Seattle School District Number 1, for the period July 1, 1973 to June 30, 1974 provides statistical information on law-related problems in a city like Seattle, with a population of a little less than 600,000 persons.[5]

Charles P. O'Toole, Supervisor of Security, reports for the Seattle School District 2,093 cases during that period, with apprehension of 841 persons, including 77 adults, 627 juvenile males and 137 juvenile females. The cases, listed by offense, are:

Burglary	592
Window Damage	84
Property Damage	239
Larceny	452
Auto-Truck Damage	3
Arson	110
Bomb Threat	64
Disturbance/Assault/Robbery	252
Narcotics	29
Miscellaneous	368

Of this total of 2,093 incidents, high schools accounted for 667; junior high and middle schools 606; elementary and lower schools 706; and other buildings 114.

During this period in the Seattle School District, property loss and damage was placed at $200,550.27, with losses attributed to window damage, $7,845.00; burglary, $70,582.80; arson, $62,885.00; and miscellaneous, $59,237.47.

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5 Annual Report, Seattle School District Number 1, Department of Business and Plant, Security Office, July 1, 1973-June 30, 1974.

With restitution and recovery of property totaling $15,778.65, the net loss to the Seattle School District for the period was $184,771.62.

It is noted from the report that in 1968-69, there were 111 apprehensions (11 adults and 100 juveniles), with gradual increases each year (247, 453, 585) to 841 (77 adults and 764 juveniles). Whatever the reasons, the increase is a significant one for a short period of five years.

Some Problems Elsewhere

The escalation of problems of law violations in our schools is, I think, a fairly universal occurrence. Hardly a week passes that some newspaper or magazine or television program does not bring it to our attention.

The June 26, 1975 issue of JET magazine,[6] under its "Education" section, reported under the headline "Surveys Show U. S. Schools Fraught With Violence," as follows:

> A crime wave has hit American schools.
>
> A report published by the U. S. Senate Subcommittee Investigating Violence in Schools said, "Our schools are experiencing serious crimes of a felonious nature, including brutal assaults on teachers and students, as well as rapes, extortion, burglaries, thefts and wanton destruction . . .
>
> The nation's school districts are spending millions of dollars annually to fight school crime and vandalism. Police patrols have been beefed up and buildings are designed with fewer windows.
>
> A United Press International Survey of Schools throughout the country points out that vandalism, violence and security cost the Chicago school system an estimated $10 million in the 1973-1974 academic year. School crime costs Connecticut taxpayers $35 million a year--the same cost Los Angeles and Philadelphia pay. Houston, the nation's sixth largest city school district, budgeted $697,000 this year for police security alone.
>
> American school officials blame the problems on numerous things--themselves, parents, racial prejudice, drugs and a permissive and violent society. Their solutions include more discipline by both parents and teachers, better education methods, more police security and an increase in personal, school and national pride.

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6 JET magazine, Johnson Publishing Company, Incorporated, Volume XLVIII, Number 14, June 26, 1975, p. 14.

The June 2, 1975 issue of TIME magazine,[7] under its "Education" section, reported under the headline "Violence in Evanston," as follows:

> A freshman girl was raped on a third-floor stair landing during orientation week last summer. Once classes started, a home-economics teacher and a Russian teacher were attacked by students. A school accountant was robbed. Throughout the year the school was plagued by arson, larceny and vandalism. Security officers were called almost daily to break up fights or investigate thefts.
>
> The setting for this crime wave is not an inner-city blackboard jungle but suburban Evanston Township High School on Chicago's elm-shaded, affluent North Shore. For years the high school has been known as one of the best in the nation, and it still earns that reputation. The current senior class has nine Merit Scholars, the largest number in the school's 92-year history. Evanson's innovative curriculum offers 260 courses and programs; the campus includes a planetarium and television studio.
>
> 100 Murders. But Evanston, like many other previously tranquil schools, has fallen victim to a rising tide of school violence across the nation. This spring a Senate subcommittee on juvenile delinquency reported that there are now more than 100 murders in public schools each year, and 70,000 assaults on teachers. It estimated that school vandalism costs $500 million a year--about the amount that is spent on textbooks.
>
> While Evanson's violence does not begin to match that in many of the high schools in neighboring Chicago or other big cities, it threatens to erode the quality of the education available to the school's 4,700 students. The music department had to curtail some of its independent study programs after someone stole the recording equipment. Business classes were hampered this spring by the theft of 13 typewriters and calculators. The daily schedule was revised to cut back on students' free time. Rest rooms on the third floor were closed after they became hangouts. As a result of attacks and threats, students have become wary. "There is a degree of fear," says Senior Dan Graff. "If you see a bunch of guys in the hall, you get nervous. You might get held up." Says School Community Worker John Ingram: "We've had everything conceivable happen here but murder."
>
> It would be simple to blame the school's problems on integration. Black students make up 23% of the enrollment and commit a disproportionate share of the violence. But Evanston Township

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[7] TIME magazine, Time, Incorporated, June 2, 1975, p. 39.

High School has always been integrated. In 1963, for example, when 18% of the students were black, there were few problems and there was need for only one daytime security guard. This year, by contrast, the school is spending nearly $160,000 for security, money that otherwise would go for education. The exit doors bristle with electronic locks. Eight plainclothes officers with two-way radios patrol the halls, while off-duty city police monitor the 55-acre campus. Next fall four special-police youth officers will be assigned to E. T. H. S. full time. Says Senior Michael Crooks: "I feel like I'm in a prison."

What has caused the shift to violence in Evanston and other U. S. schools? A number of Evanston parents blame the high school for not enforcing discipline and punishing offenders. "They're hushing things up," says Mrs. Winston Hough, who has two children in the school. "They're afraid it will reflect badly on their image." School officials blame an atmosphere of permissiveness in the home and a lack of respect for authority. "Some of the students simply don't feel that the punishment is great enough to deter them," says Security Chief Richard Goggins. "They have little fear of suspension. They're willing to take the risk."

Assault Charge. Evanston School Superintendent David Moberly places some of the blame on the difficulty involved in punishing students. "The whole court process has planted in their minds a 'do what you want' attitude." Furthermore, he says, the court process seems to drag on interminably. The suspect in the rape case, for example, remained in school most of the year awaiting prosecution. In April he was apprehended on an assault charge and he finally dropped out of school while officials were preparing to expel him.

Moberly does concede that the school has not been blameless, and that there has been "a certain laxness" in enforcing rules. Still, at Evanston as at other schools across the country, it is far easier to point to the problem than to deal with its causes. Says Moberly: "We are a reflection of the society that we serve."

The Rights of Students in Schools

The United States Supreme Court has held that state and school authorities have comprehensive authority, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.[8]

In the context of special characteristics of the school environment, says the court, the power of government to prohibit lawless action is not limited to acts of a criminal nature and includes actions which materially and substantially disrupt work and discipline in the school.[9]

The Supreme Court, in a more recent case relating to suspension and the rights of students, Goss v. Lopez,[10] stated that the State of Ohio, having chosen to extend the right to an education to people of the petitioning students' class generally, may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct occurred.[11]

The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause.[12]

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8 Tinker v. Des Moines Independent Community School District, 89 S. Ct. 733 (1969).

9 Healy v. James, 92 S. Ct. 2338 (1972).

10 Goss v. Lopez, 95 S. Ct. 729 (1975).

11 Ibid, p. 736.

12 Ibid.

In affirming a lower court ruling that suspensions of students by the Columbus (Ohio) School District was improper because of a failure to provide adequate notice, the Supreme Court in Goss v. Lopez stated that:[13]

> "Once it is determined that due process applies, the question remains what process is due." Morrisey v. Brewer, supra, 408 U. S. at 481, 92 S. Ct. at 2600. We turn to that question, fully realizing as our cases regularly do that the interpretation and application of the Due Process Clause are intensely practical matters and that "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." [Citing authorities]. We are also mindful of our own admonition that
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> > "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities." Epperson v. Arkansas, 393 U. S. 97, 104, 89 S. Ct. 266, 270, 21 L. Ed. 2d 228.
>
> There are certain bench marks to guide us, however. Mullane v. Central Hanover Trust Co., 339 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950), a case often invoked by later opinions, said that "many controversies have raged about the crytic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id, at 313, 70 S. Ct. at 657. "The fundamental requisite of due process of law is the opportunity to be heard," Grannis v. Ordean, 234 U. S. 385, 394, 34 S. Ct. 779, 783, 58 L. Ed. 1363 (1914), a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest." [Citing authorities]. At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified." Baldwin v. Hale, 68 U. S. 223, 233, 17 L. Ed. 531 (1863).

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13 Goss v. Lopez, 95 S. Ct. 729 (1975), pp. 738-741.

> It also appears from our cases that the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved. [Citing authorities]. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.
>
> The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. "[F]airness can rarely be obtained by secret, one-sided determination of the facts decisive of rights. . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." [Citing authorities].
>
> We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests qualifying for protection of the

Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.

There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is. Lower courts which have addressed the question of the nature of the procedures required in short suspension cases have reached the same conclusion. [Citing authorities]. Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school. We agree with the District Court, however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated.

In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions. Indeed, according to the testimony of the principal of Marion-Franklin High School, that school had an informal procedure, remarkably similar to that which we now require, applicable to suspensions generally but which was not followed in this case. Similarly, according to the most recent memorandum applicable to the entire CPSS . . . school principals in the CPSS are now required by local rule to provide at least as much as the constitutional minimum which we have described.

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each

such case even truncated trial type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.

The District Court found each of the suspensions involved here to have occurred without a hearing, either before or after the suspension, and that each suspension was therefore invalid and the statute unconstitutional insofar as it permits such suspensions without notice or hearing. Accordingly, the judgment is

Affirmed.

The Washington State Legislature in 1971 enacted specific legislation dealing with due process rights of students in our public schools. Additionally, administrative rules have been promulgated by the State Board of Education.[14]

Gary M. Little, General Counsel for the Seattle Public Schools, in his book, What to do Till the Lawyer Comes, enumerates the substantive rights of students under individual school districts, the Washington Administrative Code, Washington statutes, the Washington constitution, and the United States constitution.[15]

Although these rights relate specifically to the state of Washington, they are nevertheless rather universal:

(1) The right not to be discriminated against because of race, religion or national origin;

(2) The right not to be discriminated against because of economic status;

(3) The right not to be discriminated against because of sex;

(4) The right not to be discriminated against solely because of pregnancy and marital status;

(5) The right not to be discriminated against solely because of previous arrest or previous incarceration;

(6) Freedom of speech (with certain limitations against libelous speech, certain school meetings, and speeches that would disrupt the educational process);

(7) Freedom of the press (with the same limitations as freedom of speech generally);

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14 RCW 28A.04.132; Washington Administrative Code Chapter 180-40 (1972). For an excellent article, see "Education--Due Process for Washington Public School Students," Washington Law Review, University of Washington Law School, Volume 50, Number 3, June 1975, p. 675.

15 Little, Gary M., What to do Till the Lawyer Comes, a Handbook of School Law for the Seattle Public Schools (Seattle: 1974).

(8) The right to petition the school or other units of government for the redress of grievances;

(9) The right to assemble peacefully;

(10) The right to be secure in their persons from unreasonable searches and seizures (recognizing that the Fourth Amendment prohibition is applied less stringently against schools because the school has the duty to protect its students); and in this context, the school can conduct a general school-wide search of desks and lockers; can conduct a limited search of the possessions, lockers and desks of specific students where there is "reasonable cause to believe that a crime has been committed or a school regulation broken by that student"; the right to a limited search of the person of a student if the school "has reason to believe the student has a forbidden object or an object stolen from another . . . in his immediate possession"; or a limited search of the automobile of a student (under reasonable cause, when the student is present, and when the automobile is parked on the school grounds);

(11) The right to smoke (schools can prohibit or regulate smoking if they feel it is a fire or health hazard);

(12) The right to drive (schools may not prohibit students from lawfully driving, but may adopt reasonable safety rules during school hours);

(13) Freedom of dress (Washington schools cannot regulate student dress or hair length unless they pose a safety or health hazard or disrupt the educational process).

What About the Juvenile Courts?

It is not easy to accurately place the "blame" for the law violations affecting our youth and our schools. We have gone past the need for scapegoats. I do not think it is either society as a whole, lenient courts, idealistic social workers, incompetent educators or a doomed generation.

It is, I think, simply a reflection of our civilization. There are many theories extant, and I am not certain myself which one I consider valid at the expense of the other. I am at least willing to say that we do have a problem. And it will take all of our resources to come up with some acceptable solutions to that problem.

The President's Commission on Law Enforcement and the Administration of Justice in its 1968 report[16] pointed out that "The 15-to-17-year-old group is the highest for burglaries, larcenies and auto theft. For these three offenses, 15-year-olds are arrested more often than persons of any other age with 16-year-olds a close second. For the three common property offenses, the rate of arrest per 100,000 persons 15 to 17 in 1965 was 2,467 as compared to a rate of 55 for every 100,000 persons 50 years old and other . . . ."

And addressing its attention to the Juvenile Justice System, the President's Commission stated:[17]

> All three parts of the criminal justice system--police, courts, and corrections--have over the years developed special ways of dealing with children and young people. . . .

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16 The Challenge of Crime in a Free Society, The President's Commission on Law Enforcement and the Administration of Justice, E. P. Dutton and Company (New York: 1968), p. 148.

17 Ibid, p. 212.

> Although its shortcomings are many and its results too often disappointing, the juvenile justice system in many cities is operated by people who are better educated and more highly skilled, can call on more and better facilities and services, and has more ancillary agencies to which to refer its clientele than its adult counterpart. Yet the number of cases referred to juvenile courts continues to grow faster than the juvenile population, the recidivism rate continues to increase, and while there are no figures on how many delinquents graduate to become adult criminals, it is clear that many do. . . .

Then, addressing itself specifically to the Juvenile Court, the Commission states that:[18]

> Studies conducted by the Commission, legislative inquiries in various States, and reports by informed observers compel the conclusion that the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender. To say that juvenile courts have failed to achieve their goals is to say no more than what is true of criminal courts in the United States. But failure is most striking when hopes are highest.
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> . . . . What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, or psychiatrist.

Juvenile Courts, as we generally know them today, were begun at least about April 21, 1899 when the Illinois legislature passed a juvenile court law.[19]

The Illinois law required that cases involving children be heard in a special and separate courtroom, required separation of children from

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[18] Ibid, p. 216.

[19] Law of April 21, 1899, Illinois Laws 131.

adults, and prohibited placement of children under twelve years in a jail or police station.[20]

The Illinois law empowered the courts to appoint "probation officers" to investigate cases for the court and represent the interests of the children when cases were heard. The probation officers would provide information requested by the court and, after disposition, supervise children placed on probation.[21]

The Illinois law probably is largely responsible for the idea that juvenile court proceedings are civil in nature (and not criminal) and even made provision for jury trials, although the concept of jury trials in juvenile courts is almost unheard of. At least, the United States Supreme Court has ruled that there is no right to a jury trial in juvenile courts.[22]

Notwithstanding that the Illinois law is generally credited with the wave of juvenile court legislation throughout the United States, evidence of a state concern for children, which gave rise to the old parens patriae concept, was demonstrated by the New York legislature as early as 1824 when it incorporated the House of Refuge to care for delinquent and wayward children.[23]

The concept of the juvenile court as a loving place where children would find in an informal "homey" atmosphere a benevolent "father" or "mother" (the juvenile court judge), loving "uncles" and "aunts" (the social workers) and loving "grandfathers" and "grandmothers" (the managers of detention and correctional facilities) led to a multiplicity of evils under

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20 Schultz, J. Lawrence, "The Cycle of Juvenile Court History," Crime and Delinquency, October 1973, pp. 457-458.

21 Law of April 21, 1899, Illinois Laws 131, § 21.

22 McKeiver v. Pennsylvania, 403 U. S. 528 (1971).

23 Schultz, op. cit., p. 460.

the old parens patriae doctrine that at least came to the attention of an enlightened Supreme Court for review sixty-eight years after the enactment of the Illinois law.[24]

Although many innovations occurred in juvenile courts and juvenile systems throughout the United States, juvenile courts were basically not much different in 1967 than what was contemplated by the Illinois legislature in 1899. We used the euphemism of parens patriae, or "state parenthood," to cover some of our mistakes in the juvenile system. Perhaps we are now reaping the wild harvest.

A New Direction: Kent v. United States

As strange as it may seem, the United States Supreme Court did not until 1966 direct its attention in a significant case to the juvenile court, that sacred bastion of benevolent state parenthood.[25]

In what was then considered to be a "radical" departure from tradition, the court in Kent v. United States established some standards by which courts would determine whether a "child," i. e., a person under the statutory age, should be referred to the adult court for criminal prosecution in what is most often referred to as a "waiver of jurisdiction" or "decline of jurisdiction" hearing.

Essentially, the Kent case held that before a court could decline or waive juvenile court jurisdiction on a child, there must be a proper formal hearing. Additionally, the court must give considered reasons for

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24 In re Gault, 387 U. S. 1 (1967).

25 Kent v. United States, 383 U. S. 541 (1966).

declining jurisdiction such as the age, maturity and sophistication of the child; the nature of the offense; the involvement, if any, by other persons, particularly adults; prior juvenile referrals for the child; prior opportunity for treatment and rehabilitation of the child in the juvenile system; and, finally, whether the juvenile court system can do anything further to help the child.

A Startling Change: In re Gault

In 1967 the United States Supreme Court in the now-famous "Gault" case, In re Gault, determined that children are entitled to constitutional rights the same as adults.

The court reversed a decision by the Arizona Supreme Court relating to a 15-year-old boy, Gerald Francis Gault, who had been adjudged delinquent for allegedly making an obscene telephone call and had been committed by the Gila County Juvenile Court to the State Industrial School "for the period of his minority, unless sooner discharged by due process of law."[26]

There is an oft-quoted saying that "bad cases make good law." Whatever was bad in a juvenile court proceeding happened in the Gault case in the Gila County Juvenile Court. There was no notice to the parents; there was no specification of the charges; there was no right to counsel; the judge had preconceived notions about the behavior of Gerald Gault; the child had no right to confront witnesses nor to cross-examine witnesses against him; and the child had no right to call witnesses on his own behalf.

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26 In re Gault, 387 U. S. 1 (1967).

The decision of the Juvenile Court (as it typical in most jurisdictions) was not appealable, though reviewable by habeas corpus.

In his excellent opinion in the Gault case, Mr. Justice Abe Fortas stated:

> . . . Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it--was it a prank of adolescense or a brutal act threatening serious consequences to himself or society unless corrected? . . .
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> If Gerald had been over 18 he would not have been subject to Juvenile Court proceedings. For the particular offense immediately involved, the maximum punishment would have been a fine of $5 to $50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution and laws of the United States as well as under Arizona's laws and constitution. The United States Constitution would guarantee him rights and protections with respect to arrest, search and seizure, and pretrial interrogation. It would assure him of specific notice of the charges and adequate time to decide his course of action and to prepare his defense. He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, confrontation and opportunity for cross-examination would be guaranteed. So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere verbiage, and reasons more persuasive than cliche can provide.
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> We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in

> technique--but not in principle--depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.
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> . . . We hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.
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> For the reasons stated, the judgment of the Supreme Court of Arizona is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Significant cases subsequently decided by the United States Supreme Court involving juveniles are In re Winship (holding that in juvenile court proceedings for delinquency, the state must prove the case beyond a reasonable doubt as in adult criminal cases instead of by a fair preponderance of the evidence as in adult civil cases)[27] and McKeiver v. Pennsylvania (holding that the Due Process Clause of the Fourteenth Amendment does not require jury trials in juvenile courts).[28]

The basic operational principles arising out of the Gault case are that (1) a child and the child's parents are entitled to know the nature of accusations against the child, with a written petition stating specifically

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[27] In re Winship, 397 U. S. 358 (1970).

[28] McKeiver v. Pennsylvania, 403 U. S. 528 (1971), op. cit.

the charge or charges, with a copy of the petition to the child and the child's parents; (2) the child and the child's parents are entitled to be told the child is entitled to be represented by competent legal counsel and that if the child or the child's parents cannot afford a lawyer, a lawyer will be appointed at state expense; (3) the child has a right to a fair hearing in open court before an unbiased and competent judge; (4) the child has a right to deny or admit the charge in a petition; (5) the child has a right to remain silent and say nothing, or speak if the child chooses; (6) the child is entitled to call witnesses; (7) the child is entitled to face accusers and have witnesses testify under oath, subject to cross-examination; and (8) in the final analysis, the child is entitled to fundamental fairness and due process of law.

Who Should Handle School-Related Juvenile Cases?

It should be frankly admitted that once a school-related case involving criminal misconduct or delinquency is referred to the courts, the school, as a practical matter, loses jurisdiction for further decision-making. And there is really nothing the school or the school security officer can do about it except (1) testify where appropriate; and (2) offer to the court the resources of the school as an aid towards rehabilitating the offender.

The need for improvement of juvenile court systems, of course, is a matter for total community concern. Whether any juvenile court functions appropriately and provides the offending child and the community the kind

of services they deserve is dependent, in large measure, upon the willingness of the community to provide the resources.[29]

> One reason for the failure of the juvenile courts has been the community's continuing unwillingness to provide the resources--the people and facilities and concern--necessary to permit them to realize their potential and prevent them from acquiring some of the undesirable features typical of lower criminal courts in this country. In some jurisdictions, for example, the juvenile court judgeship does not have high status in the eyes of the bar, and while there are many juvenile court judges of outstanding ability and devotion, many are not. One crucial presupposition of the juvenile court philosophy--a mature and sophisticated judge, wise and well versed in law and the science of human behavior--has proved in fact too often unattainable.
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> Similarly, more than four-fifths of the juvenile judges polled in a recent survey reported no psychologist or psychiatrist available to them on a regular basis--over half a century after the juvenile court movement set out to achieve the coordinated application of the behavioral and social sciences to the misbehaving child. Clinical services to diagnose and to assist in devising treatment plans are the exception, and even where they exist, the waiting lists are so long that their usefulness is more theoretical than real.
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> The dispositional alternatives available even to the better endowed juvenile courts fall far short of the richness and the relevance to individual needs envisoned by the court's founders. In most places, indeed, the only alternatives are release outright, probation, and institutionalization. Probation means courts have no probation services at all, and in those that do, caseloads typically are so high that counseling and supervision take the form of occasional phone calls and perfunctory visits instead of the careful, individualized service that was intended. Institutionalization too often means storage, isolation from the outside world--in an overcrowded, understaffed security institution with little education, little vocational training, little counseling or job placement or other guidance upon release. Intermediate and auxiliary measures such as halfway houses, community residential treatment centers, diversified institutions and programs, intensive community supervision have proved difficult to establish.

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29 Challenge of Crime in a Free Society, op. cit., pp. 216-217.

Delinquency is a term most generally understood by all of us. In the state of Washington by statute, as is true in most states, a child under 18 years of age is delinquent if he or she is found to have broken any local, state or Federal law.

Under the Glueck definition, delinquency "refers to repeated acts of a kind which when committed by persons beyond the statutory juvenile court age . . . are punishable as crimes (either felonies or misdemeanors) . . . . "[30]

While it has frequently been said that labels should not be used because of their tendency to stigmatize, there seems to be no other valid word which would convey the meaning intended by the word "delinquency," which is generally understood. The New York Family Court Act of 1962 added a new category to "delinquent" and "neglected," viz., "Persons in need of supervision," or PINS. This has been criticized as just another euphemistic label.[31]

Not every case of delinquency (based upon criminal law violations) need be referred to the Juvenile Court. It is quite possible that an administrative unit of a school could make appropriate disposition of school-related delinquent acts, provided that all the requirements of due process and fundamental fairness are met. Due process, in its simplest sense, means notice and a fair opportunity to be heard.

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30 Glueck, Sheldon and Eleanor, Unraveling Juvenile Delinquency, Harvard University Press, (Cambridge: 1950), p. 13.

31 Schepses, Erwin, "A Note on Labels," Crime and Delinquency, National Council on Crime and Delinquency, Volume 11, Number 2, April 1965, p. 162.

Implications for the School Security Officer

There is little question that persons most likely to be involved with law violations to the cognizance of school security officers will be juveniles under most state laws. Thus it is reasonable to be expected that those persons, regardless of the offense they may have committed, would be at least first referred to the Juvenile Court for processing if they are referred outside the school system.

If it is decided that, after determination of violation of a particular law, the individual (or class of individuals, to be more correct) should not be referred to the court but retained in the school system for processing, then all the requirements of fundamental fairness and due process must still be met at least to the extent indicated in Goss v. Lopez.[32]

If it is decided that, after determination of violation of a particular law, the individual (or class of individuals) should be referred to the court, then the school security officer or officers must be willing to accept the jurisdiction of the court as controlling.

In either instance, the school security officer must be professionally responsible for investigation and presentation of the evidence in an adversary hearing, subject to cross-examination. This at least suggests that investigation and preparation of a case and testimony must be no less in the restricted atmosphere of an in-school hearing than in the more formalized atmosphere of a Juvenile Court hearing.

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[32] Goss v. Lopez., op. cit.

School security officers, like police officers of the more traditional type, must have a commitment to law enforcement as a desirable process, but must also have a strong commitment to fairness and the rights of persons--in this instance, the rights of juveniles.

Impatience with the juvenile court system is to be expected. Impatience, however, without active community participation for improvement, is to be condemned.

I do not believe that school security officers, police officers, prosecutors, school authorities or defense counsel are seeking inconsistent results. I am satisfied that they are all seeking the solutions that are in the public interest, i. e., for the protection of the community, and that are also in the best interests of the juvenile.

--Charles Z. Smith